81. *Repealed by Bom. IV of 1913, s. 38.*

Governor in Council empowered to suspend operation of section 60 or 74.

[a] **82.** It shall be lawful for the Governor in Council by notification in the *Bombay Government Gazette* from time to time :

(*a*) to suspend the operation of section 60 or 74, or of both, within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and

(*b*) to cancel any such notification.

During the period for which any notification under the above clause (*a*) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

[a] As to the local repeal of section 82, see para. 5 of footnote [a] on p. 1, *supra*.

CHAPTER VII.

Of Superior and Inferior Holders.

Amount of rent payable by tenant.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking, or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be

presumed to hold at such rent as, having regarded to all of the circumstances of the case, shall be just and reasonable.

Duration of tenancy.

And where by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

Presumption as to tenure.

And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, received, holds or retains possession of the same, it shall be presumed that he is in possession as tenant.

Saving clause.

Nothing contained in this section shall affect the right of the landlord (if he have the same either by virtue of agreement, usage, or otherwise), to enhance the rent payable, or services renderable by the tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid.

SUMMARY (s. 83.)

Government officials.

Paying rent by mistake ... J. 17.

Inamdar and mirasdars.

Rent ... ... J. 6.

Inamdar and occupants.
(1) Local fund ... ... J. 1, 5.
(2) Village pasture ... ... J. 2.
Inamdar and tenants,
Relations ... ... J. 8, 19.
Landlord and tenant.
(1) Cess imposed by an Act. J. 4,
(2) Eviction of tenant ... J. 9, 14.
(3) Relations ... ... J. 2, 3, 7, 10, 11, 12, 13, 15, 16, 18, 20. 21, 22, 23.
(4) Trees planted by tenant. J. 24.
Tenant.
Distinguished from inferior holder ... ... G. 1.

G. 1. Section 83 of the Act comprehends every possible kind of tenancy to which the Act can relate. The use of the word "Tenant" is essential in it because the section settles the general relationship existing between landlord and tenant for the purposes of the Act and includes certain tenancies in respect of which there is a presumption as to tenure.

There is thus really no distinction between a tenant and an inferior holder except in the use of terms, the one to express derivatory right from the landlord, the other to express a liability to pay rent to the landlord. (G. R. No. 5843, dated 30th October 1880.)

G. 2. Putting speculative rents out of the question, there is no reason why assistance should not be accorded where survey rates have been introduced and nothing more demanded. Under Section 83-a tenant shall be regarded as holding land at the rent

agreed on between him and the landlord, if there is evidence of such agreement: and the Collector is bound to give assistance if required, for the recovery of so much rent as is lawfully due. If the question what is lawfully due should be of a complicated or difficult nature to determine, it is open to the Collector to refuse assistance. (Para. 7 of L. R's. No. 1502, dated 17th December 1808; *vide* G. R. No. 6841, dated 30th December 1880)

J. 1. In the absence of a special agreement to the contrary, the local fund cess must, as between an Inamdar and an occupant under him, be paid by the occupant. (S. A. 325 of 1871.)

J. 2. Unless authorised by the terms of his grant, an Inamdar cannot enclose lands at will, and certainly not lands which have been immemorially used as village pasture lands. (P. J. 3, Vishwanath *vs.* Mahadaji, 1879.)

J. 3. Section 83 of the Land Revenue Code (Bombay Act V. of 1879) is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. (Kalidas Laldas *vs.* Bhaiji Naran—I. L. R., Bombay, Volume XVI., page 647, 1892.)

J. 4. A tenant is liable to pay a cess imposed by an Act passed subsequent to the lease, in addition to the rent agreed upon in that lease. (Ram Tukoji *vs.* Gopal Dhondi,—1893. I. L. R., XVII, Bombay, p. 54.)

J. 5. An Inamdar is a "superior holder" within the definition of Regulation XVII. of 1827 and Bombay Acts I. of 1865 and V. of 1879. He is therefore the person primarily liable to pay the Local Fund cess under Section 8 of Bombay Act III. of 1869.

There is no provision of law entitling an Inamdar to charge for his expenses in collecting the cess.

(Secretary of State for India *vs.* Natu,—I. L. R., Bombay, Volume XVII., page 422, 1893.)

J. 6. Mirasdars in an Inam village cannot always claim to hold at a fixed rent. An Inamdar can enhance his rents within the limits of custom. (Vishwanath Bhikaji *vs.* Dhondappa,—I. L. R., Bombay, Volume XVII., page 475, 1893.)

J. 7. Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant.

Held, that, the setting up of this right was a repudiation of the landlord's title and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year. (Baba *vs.* Vishwanath Joshi,—I. L. R., Bombay, Volume VIII., page 228, 1884.)

J. 8. Appasaheb, the Chief of Kagvad, let certain land to the defendant for a term of twelve years by lease, dated 12th June 1857. Appasheb died in the same year without male issue, and his Saramjam was resumed by the British Government. In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment, and again in 1860 entered his name as occupant in the Government books. In January 1868, the widow of Appasaheb adopted the plaintiff as her son. In 1881, the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857. The defendant contended that the land was not the private land of Appasaheb, but belonged to the State of Kagvad, which was resumed on his death by the Government, and that the plaintiff's claim was barred by the law of Limitation. The Subordinate Judge allowed the plaintiff's claim, holding that the land was the private property of Appasaheb, Chief, of Kagvard, and that the claim was not barred. The District Judge onappeal held that the land was not the private property of the Chief, but was the property of the State, and that

on the resumption of the State by the British Government the defendant's lease came to an end and the relation of landlord and tenant previously existing between the Chief and the defendant ceased. He also held that the plaintiff's claim was barred by limitation and reversed the decree of the Subordinate Judge. On appeal to the High Court—

Held, that, no distinction could be drawn between the public and the private property of an absolute Chief, which Appasaheb was.

That in the absence of a contrary intention, the resumption by the British Government of a Saramjam or Inam leaves the occupancy rights of the Saramjamdar or Inamdar untouched.

That a Saramjamdar or Inamdar may acquire occupancy rights during the continuance of the Saramjam or the Inam.

Held, also, that the fact that the revenue officers placed the defendant's name in the Government books as the occupant paying assessment did not make the defendant's possession adverse, and could not prejudice the plaintiff's right as landlord. (Ganpatrao Trimbak Patawardhan *vs.* Ganesh Babaji Bhat,—I. L. R. Bombay, Volume X., page 112,-1886.)

J. 9. A tenant repudiating the title under which he entered becomes, liable to immediate eviction at the option of the landlord. (Vishnu Chintaman *vs.* Balaji bin Raghuji,—1888. I. L. R., XII. Bombay, p. 359.)

J. 10. Where Survey Settlement (under Act 1 of 1865) is introduced, Section 83 and not Section 68 applies in determining the nature of tenancy. (P. J. 19, Khanderao *vs.* Balsing, 1889.)

J. 11. Where there is no satisfactory evidence of the commencement of a tenancy by reason of its antiquity, nor any evidence of the period of its duration, nor of any usage of the locality as to the duration of such tenancies; the tenancy must be presumed co-extensive with the duration of the

tenure of the landlord. (P. J. 179, Jaikrishna *vs.* Lakshamanrao, 1890, and I. L. R. XIV, Bombay, page, 392.)

J. 12. Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the Court ought to infer that the intention of the parties was to create such a tenancy:

Held, that, the lease was not a perpetual lease. (Ramabai Saheb Patwardhan *vs.* Babáji,—I L. R., XV, Bombay, page 704, 1891.)

J. 13. A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were mere yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given.

Held, that the plaintiff could not recover. For his plaint and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claimed to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit which was not given. (Lalú Gopal *vs.* Bai Motan Bibi,—1893, I. L. R., XVII, Bombay, page 631.)

J. 14. The District Judge cannot, in his judgment, give the notice, (to quit) which the plaintiff is bound to give to his tenants. (I. L. R. XVIII Bombay, 107—Abu Bakar *vs.* Venkat Ramana).

J. 15. Section 83 of the Land Revenue Code does not apply to a tenancy which commenced about 40 years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of

a tenancy. (Lakshman *vs.* Vithu, 1894, I. L. R., XVIII, Bombay, page 221).

J. 16. The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure, does not prevent the application of sectton 83 (1) of the Bombay Land Revenue Code in cases where by reason of the antiquity of the tenancy no satisfactory evidence of its commencement is forthcoming. (Ramchandra Narayan Mantri *vs.* Anant, 1894, I. L. R., XVIII, Bombay, 433).

J. 17. In 1898 the plaintiff brought this suit against the Secretary of State and the Collector of Salt Revenue to recover possession of certain land which had for many years been in actual possession of the customs officials of Government and for which these officials had paid rent to the plaintiff and his predecessor. In their written Statement the defendants claimed that the land belonged to Government and pleaded that although it was true that they had paid rent for some years to the plaintiff yet that such payments had been made by mistake.

Held, that the admission by the defendants that they had paid rent to the plaintiff was sufficient in law to raise a *prima facie* presumption of title in the plaintiff's favour and to throw the *onus* upon the defendants of proving that the land belonged to Government and that the rent had been paid under a mistake. (Vithaldas *vs.* Secretary of State for India, XXVI, Bombay, 410.)

J. 18. To claim the benefit of the presumption created by Section 83, it is not sufficient that there should be no satisfactory evidence of the commencement of the tenancy but the absence of that satisfactory evidence must be by reason of the antiquity of tenancy. (Vishwanath *vs.* Tatya, Bombay, Law Reporter, Vol. VI, 1904, page 645.)

J. 19. A grant to an Inamdar may be either of the Royal share of revenue or of the soil; but ordi-

narily it is of the former description and the burden rests on the Inamdar to show that he is an alienee of the soil.

Where an Inamdar is an alienee only of the land revenue, then his relation towards those who hold land within the area of the Inam grant very according to certain well recognized principles. If the holding was created prior to the grant of the Inam, then the Inamdar as such can only claim land revenue or assessment; for he has no interest in the soil in respect of which rent would be paid; but if the holding be later in origin than the Inam grant, then the lands comprised in such holding would be the sheri lands of the Inamdar and he would be entitled to place tenants in possession of them, even if only a grantee of revenue. With respect to the latter class of holding, direct contractual relations would be established between the Inamdar and the holder. If no such contract can be proved recourse must be had to Section 83. (Rajya *valad* Imam *vs.* Balkrishna Gangadhar, XXIX, Bombay, 415.)

J. 20. Section 83 creates no new rights; it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed (Nahanchand *vs.* Modi Kekhushru, 1906, I. L. R. 31, Bombay 183)

J. 21. Where a rayat of a non-transferable holding executed a conveyance in respect thereof in favour of the defendants, but continued notwithstanding to reside on the property and carry on the cultivation for some time and the rent of the holding was paid by the defenants in the name of the rayat:—

Held, that if the transaction was not intended to be an operative transaction, the mere fact that the rayat went away from the holding to reside elsewhere would not be sufficient to make out a case of abandonment so as to entitle the landlord to re-

enter. (Mathura Mandal *vs.* Ganga Charan Gope, 1906, I. L. R. 33, Calcutta, 1219.)

J. 22. A lessee who may have lost possession of a portion of the lands covered by his lease, is not entitled to suspend the payment of rent if the dispossession has been effected, not by the landlord but by other lessees under him. (Kali Prasanna *vs.* Mathuranath, I. L. R Vol. 34, Calcutta, page 191, 1907.)

J. 23. The saving clause of Section 83 seems to contemplate that though the commencement and duration of the tenancy may be lost in the obscurity of antiquity, still there may be vested in the landlord a right by agreement to enhance rent and evict for its non-payment. (Raghunath *vs.* Luxman, Bombay Law Reporter II, page 93.)

J. 24. **Permanent Tenant**—A permanent tenant, the origin of whose tenancy is lost in antiquity and who has planted trees upon the lands demised, has a right to cut them down and to use them.

The English Law of fixtures and the principles upon which it is based have no applicability in this country.

Sitabai *vs.* Sambhu Sonu, Indian Law Reports, 38 Bombay, 716.

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

Annual tenancy terminates on the 31st March.

An annual tenancy shall [a] in the absence of any special agreement in writing to the contrary [a] require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy at

Three months' notice of termination of tenancy to be given by landlord to tenant, or *vice-versa*.

the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E, or to the like effect.

[a-a]These words were inserted by Bom. VII of 1914, s. 2

Order granting suspensions or remissions to inferior holders.

[a]**84A.** (*1*) Whenever from any cause the payment of the whole or any part of the land revenue payable to Government by a superior holder in respect of any land is suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of such land by the inferior holder or holders to an amount which—

(*a*) in the case of land in respect of which full assessment is payable to Government, shall not exceed double the amount of the land revenue of which the payment by such superior holder has been suspended or remitted by Government, and

(*b*) in the case of land in respect of which land revenue less than the full assessment is payable to Government, shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

(*2*) In the case of land in respect of which no land revenue is payable to Government by a superior holder, whenever from any cause the payment of the whole or any part of the land revenue payable to Government in respect of any other land in the same neighbourhood has

been suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of the first mentioned land by the inferior holder or holders to an amount which shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

(3) An order passed under sub section (1) or under sub-section (2) shall not be questioned in any Court. Such order not to be questioned in any Court.

(4) If the superior holder collects any rent or land revenue of which the payment has been remitted, or before the expiration of the period of suspension collects any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders, the whole of the land revenue remitted or suspended in favour of such superior holder shall, without prejudice to the rights of the inferior holder or holders to recover the rent or land revenue so collected, become immediately payable by the superior holder. Consequences following on such order.

(5) No application for assistance under sections 86 and 87 shall be entertained, no suit shall lie, and no decree of a Civil Court shall be executed, for the recovery by a superior holder of any rent or land revenue of which the payment has been remitted, or, during the period of suspension, of any rent or land revenue of

which the payment has been suspended in favour of an inferior holder or holders; but, where the payment of rent or land revenue by an inferior holder or holders has been suspended, the period during which the suspension has continued shall be excluded from the period of limitation prescribed for a suit for the recovery of such rent or land revenue.

Crop-share fixed by custom or agreement.

(*6*) Nothing in this section shall make it unlawful for the superior holder to take the crop-share fixed by custom or agreement in respect of any land on which rent is payable in whole or in part in the form of a share of the crop.

Meaning of assessment.

(*7*) Explanation—

In respect of land which has not been assessed under the provisions of Chapter VIII or under any survey settlement confirmed by section 112, the term assessment, for the purposes of this section, includes the rent or land revenue payable by custom or by the usage of the locality.

Sind excluded.

(*8*) Nothing in this section shall apply to any land situated in the Province of Sind.

[a] This section was inserted by Bom. VII of 1914, s. 3.

N 1. **The objects and reasons of Section 84A.**— This section is on the lines of section 51 of the Agra Tenancy Act (United Provinces Act II of 1901), section 30 of the Panjab Tenancy Act, 1887, and section 18 of the Central Provinces Tenancy Act, 1898. The object is to secure for Tenants and other inferior holders a share in the concessions granted by Government under the rules for the suspension and remission of Land revenue. The chief difficulty experienced in carrying out the policy of liberal suspensions and remissions is that, though Government may grant a remission or sus-

pension to the superior holder, the latter can recover the whole of the rent or land revenue at once from the inferior holders. The new section 84—A. will remedy this defect in the Act. The principle of the legislation has already been approved by the Bombay Legislative Council in section 94A of the Land Revenue Code, but the provisions contained in that section have a more limited scope than those now proposed. The conditions of Sind being different, it is not necessary that the section should apply to that Province.

(Bombay Government Gazette, 1914 Part VII, page 192.)

Recovery of superior holders' dues.

[a]**85.** (*1*) Every superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, shall receive his dues on account of rent or land revenue from the inferior holders through such patel and accountant.

(*2*) Where such patel and accountant fail to recover in behalf of such superior holder any sum due and payable to him on account of rent or land revenue, such superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

(*3*) Where any such patel or accountant has recovered any sum in behalf of such superior holder and fails to account to him for the same, the Collector shall, on written application from the superior holder, recover such sum from such patel or accountant as an arrear of land revenue.

(*4*) Where any such superior holder demands or receives any rent or land revenue from any

inferior holder otherwise than through such patel or accountant, he shall, on conviction in a summary enquiry before the Collector, be liable to a fine not exceeding three times the amount of the sum so demanded or received.

[a] This section was substituted by Bom. I of 1910, 1st Sch, Part II, Serial No. 6, for the original section. As to the local repeal of this section, see para. 5 of foot-note [a] on page 1, *supra*.

SUMMARY (S. 85.)

Section 85.

(1) When applicable ... ... G 4, 6

(2) When not applicable ... G 1, 2, 10. J 1

Alienated share of a village.

Meaning of ... ... G 3, 5

Inamdars—

(1) Accepting a bond or promissory note for land revenue... ... G 7, 8

(2) Requisition to village officers... G 9

G. 1. **Local Fund may be received direct :—** The superior holder may receive payment of the cess from his tenants or inferior holders without the intervention of the village officers. Section 85 refers to rent or land revenue only. (G. R. No. 3761, dated 10th June 1882).

G. 2. In the case of large Inamdars who, customarily, receive at their houses the dues in kind there is no objection to their receiving their dues direct and giving a receipt for such payments as provided in section 58 (2) of the Land Revenue Code. (G. R. No. 6020, dated 15th August 1883).

G. 3. **Alienated share of a village explained.—** A person holding an Inam No. in a Government village cannot be said to be the holder of an alienated share of a village. The expression "holder of an alienated share of a village" denotes not the

holder of an isolated piece of Inam land either in a Khalsa or in an alienated village, but a holder who shares with Government either singly or jointly with other holders the revenue of an alienated village. (G. R. No. 6037, dated 26th July 1884.)

G. 4. Section 85 of the Code is only meant to apply to the holders of entire villages and shares, which have been alienated *as shares, i.e.*, of definite shares such as one-half and two-thirds. (G. R. No. 7484, dated 19th September 1884.)

G. 5. **The effect of the entry of an Inamdar's name.**—The Collector has no authority to determine the extent of the right, title and interest of the judgment debtor, and there was no occasion for him to issue any order for payment of an amount not specified in the decree. The report of the Legal Remembrancer contains the following observation:—

The registration of an Inamdar's name for a particular share confers on him no right to receive any fixed proportion of the revenue, and Government cannot adjudicate in quarrels between shareholders and rival claimants. (G. R. No. 6206, dated 14th September 1887.)

G 6. It would be better to leave the wording of Section 85 as it is. It should continue to be interpreted as at present, *i. e.*, that an Inamdar is prohibited from collecting direct where both the patel and village accountant are hereditary. But care should be taken when watans lapse to Government that the watan is continued in the name of Government so that the officiator may be regarded as a nominee of Government as owners of the watan. (G. R. No. 7591, dated 2nd August 1907).

G. 7. An Inamdar accepted a bond on account of arrears of land revenue due from a land holder of his village. He was, therefore, fined by the Collector under Section 85 (4) and Government re-

fused to interfere with the Collector's order. (G.R. No. 8265, dated 24th August 1909.)

G. 8. To take a mortgage bond or a promissory note by the superior holder from an inferior holder for the land revenue does not absolve the superior holder from the necessity of complying with the provisions of Section 85. Village officer's signature or attestation on the mortgage bond or promissory note is not equivalent to a receipt of revenue *through* such village officers. (L. 1028, dated 9th December 1910.)

G. 9. Any formal requisition regarding the collection of revenue which an Inamdar may have to make should be addressed to the village officers of his village. (G. R. No. 7307, dated 5th August 1912.)

G. 10. **Sheri lands in alienated villages.**—This section does not apply to the case of an Inamdar of an alienated village who holds himself Land in the village which he lets out to a tenant. The rent due for that land is not due to him as the superior holder of an alienated village. (G. R. No. 1425, dated 5th February 1915.)

J. 1. Section 85 does not bar the jurisdiction of civil courts to try suits by superior holders to recover the arrears of their dues from inferior holders. A superior holder, who seeks to recover his dues through a Civil Court, does not recover them directly from the tenant or the inferior holder within the meaning of Section 85 (4). Vishwanath Ganesh Paranjpe *v.* Kondaji Sakharam, 19 Bombay Law Reporter, page 820, I. L. R. 42 Bombay 49.

Superior holders entitled to assistance in recovery of dues from inferior holders, etc.

86. Superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in section 137, and in the

same manner as prescribed in Chapter XI [a] for the realization of land revenue by Government :

Provided that such application be made within the revenue year or within the year of tenancy in which the said rent or land revenue became payable.

But application must be made within the revenue year or within the year of tenancy.

[a] Words repealed Bom. III of 1886 are omitted.

[b]**87.** (*1*) On application being made under section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer fixing a day for inquiry into the case.

The Collector how to proceed on such application being made.

[b](*2*) On the day so fixed he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land revenue as appears to him upon the evidence before him to be lawfully due.

[b](*3*) But, if it appears to the Collector that the question at issue between the parties is of a complicated or difficult nature, he may in his discretion either refuse the assistance asked for, or, if the land to which the dispute relates, has been assessed under the provisions of Chapter VIII [a] or any survey settlement confirmed by section 112, grant assistance to the extent only of the assessment so fixed upon the said land.

Assistance may be refused or granted to a limited extent only.

[b] (*4*) Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due, as the case may be.

Civil suit not to be barred.

[c](5) One appeal only shall lie from any order passed under this section.

[a] Words repealed Bom. III of 1886 are omitted.

[b] These sub-sections were originally paragraphs of section 87. They were numbered as sub-sections by Bom. IV of 1913, s. 39.

[c] This sub-section was added by Bom. IV of 1913, s. 39.

SUMMARY (ss. 86 and 87.)

1 Sections 86 and 87.
(1) Explained ... ... G. 41, 62. J. 1.
(2) To be read with other sections ... ... N. 1, 3, 4.

2 Assistance suits.
(1) Applications.
(a) By post ... G. 33,
(b) Re-entertained ... G. 35,
(c) Single, when ... G. 1, 27,
(2) Court fee ... ... G. 16, 26.
(3) Documents filed ... G. 68.
(4) Execution of decrees ... N. 7. G. 44, 51, 53. J. 2.
(5) Expenses ... ... N. 9. G. 14, 28.
(6) Interest in the guise of rent ... ... G. 39, 46, 66.
(7) Notice to defendant ... N. 2, 10.
„ to Superior holder G. 49.
(8) Notice fee in execution of decrees ... ... N. 7.

(9) Pleaders and powers of attorney ... ... G. 32, 38.
(10) Processes ... ... G. 54.
(11) Rent fixed in one lease for lands in 2 districts ... ... N. 6.
(12) Revision of ... ... N. 11.
(13) *Swamitwa* to a representative watandar. J. 5.
(14) When—to be rejected... G. 5, 18, 29.
(15) When—not to be rejected ... ... G. 20, 21
(16) When—to be sent to record room ... N. 8.
(17) When tenant dies ... G. 25.

3 Assistance suits by.
(1) Jahagirdars under treaty G. 26, 36.
(2) Municipality ... ... N 5.
(3) Mortgagee in possession G. 7, 46, 52.
(4) Superior holders ...G. 11, 12, 13, 19, 23, 37.

4 Assistance suits in Inam villages.
(1) Accounts of Government and Inamdar separate ... ... G. 59.
(2) Alienation manual referred to ... ... N. 4.
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(5) Enhanced rents ... J. 3.
(6) Hearing of—in villages concerned ... ... G. 57.
(7) Joint holder having sole management ... G. 3.
(8) Judi ... ... G. 56, 60.
(9) Kauls or perpetual leases ... ... G. 40.
(10) Local fund cess ... G. 24, 31, 40.
(11) New purchaser from original tenant not liable for past arrears. J. 7.
(12) Powers of Government not applicable to ... J. 4.
(13) Prompt assistance ... G. 50, 53.
(14) Rent-role to be furnished to village officers ... ... G. 55.
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(18) Subsharers.
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(19) Survey and un-surveyed villages ... G. 6.

(20) Village officers.
- (*a*) Appointment of. G. 42, 45, 48.
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5 Powers.
- (1) Mamlatdars ... ... G. 15.
- (2) Mukhtiarkars in Sind. G. 65.
- (3) Mahalkaris ... ... G. 17, 34.
- (4) Special Head Karkuns. G. 43, 63.
- (5) Ordinary Head Karkuns. G. 47, 64.
- (6) Treasury Head Karkuns should not be given— ... G. 67.

N. 1. *Vide* Sections 84 A, 135 (*i*) 148 and 192 and orders printed thereunder.

N. 2. For form of notice to be issued under Section 87, see Appendix XI.

N. 3. *Vide* G. R. No. 5424, dated 5th August 1902 and G. R. No. 4450, dated 11th June 1904 under Section 88.

N. 4. As regards assistance suits in Inam villages, see also Sections 145 and 146 of Joglekar's Alienation Manual.

N. 5. A Municipality is deemed to be a superior holder within the meaning of Sections 86 and 87 of the Land Revenue Code. (*Vide* Section 166 of the Bombay District Municipal Act, III of 1901.)

N. 6. If a man has agreed to pay rent collectively in respect of two lands, one being in one district and the other being in another district, it is doubtful whether the Mamlatdar in one district can grant assistance for the whole amount.

N. 7. Notice fee recovered in executing decrees should be credited to Government.

N 8. Assistance cases should not be sent to the Record room until the decrees are fully executed. Till then they should be considered as awaiting cases.

N. 9. Can travelling expenses of the defendant be awarded as cost when the plaint is rejected ? It appears that such cost can be awarded when the defendant is unnecessarily dragged into a Mamlatdar's office, and the grounds for awarding such cost are the following :—

(*a*) The inquiry in assistance suits is summary.

(*b*) The office holding the inquiry is a Civil Court. (See Section 196.)

(*c*) Under G. R. 4468, dated 10th July 1882 (under Section 192) the court is authorised to pass orders with respect to costs.

(*d*) The defendant or his agent is compelled to attend in person. (*Vide* last paragraph of the form of notice in Appendix XI.)

N. 10. With a view to reduce heavy work from a large number of assistance cases the following addition was made by a Mamlatdar in the notice to the defendant. (*Vide*, Appendix XI.)

> " On the day appointed you should either produce the plaintiff's receipt for the amount claimed or pay the amount in Court.
>
> In default of this if a decree is passed against you after inquiry one fourth amount of the sum decreed will be imposed as fine under Section 148."

N. 11. As a second appeal is not now allowed by Law a Collector will generally not entertain petitions for revision under Section 211, as Civil

Courts are always open to the parties for further litigation.

G. 1. **Applications for assistance—Single application sufficient against several inferior holders.**—A superior holder when applying for assistance to collect rent from his tenants need not make a separate application on a separate stamp for each tenant's case. He may put as many cases as he can into one paper, provided the total amount of rent for the recovery of which the application is made is sufficiently covered by the stamp. (G. R. R. D. No. 2818, dated 4th June 1874.)

G. 2. **Recovery—of dues by adjustment in accounts.**—If a sub-sharer in a dumala village owns land which is entered in the accounts not as Inam but as the holding of an ordinary occupant in the village, and if it has been the practice for the revenue of such land to be adjusted in the accounts as a set-off against the share of such sub-sharer in the revenue of the village instead of being paid in cash, the practice should not be lightly disregarded, and no assistance should be rendered by the revenue officer to the principal Dumaldars in the recovery of rent of such land in cash. When applications for such assistance are made, the revenue-officers applied to should refer the parties to the Civil Court for a decision of their respective rights; and if they obtain a settlement of their dispute, assistance may be given in accordance with the terms of the Court's final decree. (G. R. No. 2689, dated 24th May 1880.)

G. 3. **Assistance—to be given to joint holders.**—If a village held in Inam by more than one person is entered in the accounts in the name of only one person, and if a dispute arises between the registered holder and the other sharer or sharers as to the right of recovering the revenue, and the Collector on the matter coming before him is satisfied that the person in whose name the village stands has all along had the sole management of it, he should

consider such holder alone to be entitled to receive the rents or land-revenue due by the tenants until such time as some arrangement for partition of the village for sharing or exercising jointly the right of management is made by the parties either privately or by a suit between themselves. In such cases the parties applying for assistance should be referred to the Civil Court. (G. R. No. 3350, dated 29th June 1880.)

G. 4. **To Deshmuks and Deshpandes.**—When a village is held by an Inamdar subject to the right of a Deshmukh or Deshpande or some other such Hakdar to a share in, or a charge on, the revenue of the village, the Deshmukh, Deshpande or other Hakdar stands *pro tanto* to the Inamdar in the relation of superior holder, and is, therefore, under Section 86 of the Code entitled to assistanee in the recovery of his dues from the Inamdar. The definition of "land" in the Code is so drawn as to make the terms "holder" and "superior holder" apply to persons entitled to a share in, or a charge on, the revenue as well as to persons in the possession and enjoyment of the land itself. (G. R. No. 4379, dated 20th August 1880.)

G. 5. **Collector to refuse assistance in complicated cases.**—There is really no distinction between a tenant and an inferior holder except in the use of terms, the one to express derivatory right from the landlord, the other to express liability to pay rent to landlord.

A tenant shall be regarded as holding land at the rent agreed on between him and the landlord if there is evidence of such agreement, and the Collector is bound to give assistance if required for the recovery of so much rent as is lawfully due. If the question what is lawfully due should be of a complicated nature or difficult to determine, it is open to the Collector to refuse assistance. (G. R. No. 5841, dated 30th October 1880, and G. R. No. 6841, dated 30th December 1880.)

G. 6. **In villages whether surveyed or unsurveyed.**—Holders of alienated villages are entitled to have assistance for the recovery of their dues from their tenants under this section whether a survey settlement has been extended to their villages or not. (G. R. No. 4150, dated 18th July 1881.)

G. 7. **Superior holders.—Mortgagee in possession.**—A mortgagee in possession is a superior holder within the meaning of the Code and is entitled to assistance until he loses possession by due course of law. (G. R. No. 5406, dated 17th September 1881.)

G. 8. **Sharers in alienated villages.**—In accordance with the definitions in clauses 4, 13 and 14 of Section 3 of the Code and the decision of Government in their Resolution No. 4379, of 20th August 1880, [see G. 4. above] all the sharers in alienated villages, whether their names are entered in the accounts or not as managers, are in respect of their shares in, or charges on, the revenue entitled to assistance in the recovery thereof as superior holders from the revenues of the village and not from other private property of the Inamdar. (G. R. No. 5454, dated 21st Semtember 1881.)

G. 9. **Of village officer's remuneration.**—Section 17 of the Bombay Hereditary Offices Act provides for the assessment of the amount of Haks payable in alienated villages by Inamdars, &c., or others owning or occupying land therein. The Collector has power from time to time to determine the amount of such payments recoverable, provided that no larger demand shall be made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages. Section 81 of the same Act provides that recoveries of emoluments under the Act may be made as provided by any law for the time being in force relating to the recovery of the land-revenue.

Where, therefore, the practice is for the Kulkarni of an alienated village to receive from the cultivators, by way of remuneration, certain quantity of grain, and certain amount in cash in proportion to the area they cultivate, there can be no injustice in holding *prima facie* that the Kulkarni is entitled to the payment in question, and, on failure of the rayats to pay as usual, rendering him such assistance as the law allows to enable him to receive the same, leaving it to the Inamdar or his tenants, as the case may be, to show that the payment is a purely voluntary one, terminable at their own pleasure, and not a customary one which they have no right to discontinue. (G. R. No. 5795, dated 4th October 1881; and G. R. No. 6750, dated 11th November 1881.)

G. 10. **To Sub-sharers:**—The sub-sharer is entitled to a certain sum representing his share or proportion of revenue due to all the co-sharers and this sum he is entitled to receive not direct from the inferior holders but through the hereditary pati- and village accountant. Failure on the part of the inferior holders to pay their dues will generally affect all the sharers alike, who, as a body of superior holders will be entitled to assistance for the recovery thereof. He is entitled to assistance under Section 86 as against the co-sharers, whether as co-sharers or 'inferior holders' the definition of which term in clause 14 of Section 3 is quite as applicable to them as to tenants. (G. R. R. D. No. 5838, dated 6th October 1881.) (*Vide* also G. R. No. 4330, dated 5th July 1882.)

G. 11. **Up to what amount.**—In a case of the nature given below assistance should be given to the following extent.—

A is a registered occupant of a holding assessed at Rs. 10; one half of it belongs to his brother B, who has leased it on permanent tenure to C for Rs. 7, who in his turn has rented it to D for Rs. 10. A, B, C, each apply for assistance for the recovery

of their rent by precautionary measures. In each case assistance should be given to the exent of their net profit, *i. e.*, 5 Rs. to A, 2 Rs. to B, and 3 Rs. to C. (G. R. No. 7056, dated 24th November 1881.)

G. 12. **Grounds on which Collector's decision to proceed.**—The Collector's decision under this section should proceed on the grounds indicated in the first paragraph of Section 83 of the Code, *viz*:—

(*a*) If any agreement between the superior holder and the tenant is proved, the rent agreed upon between them.

(*b*) If there is no satisfactory evidence of such agreement, the rent payable by the usage of the locality.

(*c*) In the absence of any agreement or usage, such rent as may under the circumstances of the case be deemed just and reasonable.

(*d*) If owing to the complicated and difficult nature of the dispute the Collector is unable to settle it summarily, he can refuse assistance, or, where the survey assesment has been fixed may grant assistance to the extent of such assessment. (G. R. No. 3904, dated 17th June 1882.)

G. 13. **Occupants of Government lands.**—Under the Code occupants of unalienated lands and holders of alienated lands come under the common denomination of "Superior holders" and are alike entitled to assistance for the recovery of rent or revenue due to them under the provisions of Section 86 and the following sections of the Code. (G. R. No. 3904, dated 17th June 1882.)

G. 14. **Costs to be awarded.**—Inasmuch as the office of any authority holding a summary inquiry under the Code is a Civil Court, such court may direct by whom the costs of each party are to be paid whether in whole or part. (G. R. No. 4468, dated 10th July 1882.)

G. 15. **Delegation of powers—to Mamlatdars.**—In districts where the practice still obtains the

Mamlatdars may continue to exercise the powers under Sections 86 and 87 of the Code, which powers they previously exercised under Regulations XVII. of 1827. Where, however, the practice has been discontinued the Collectors are authorized to delegate to the Mamlatdars in their districts the powers of receiving applications and issuing orders under Sections 86 and 87 of the Code. (G. R. No. 2598, dated 31st March 1883.)

G. 16. **Decisions in assistance cases are not decrees.**—Orders passed by a revenue officer under Section 87 of the Bombay Land-Revenue Code are not decrees, or orders having the force of a decree passed by a Revenue Court within the meaning of Article 7, Schedule I of the Court Fees Act. For the purposes of certain sections of the Penal Code a formal or a summary inquiry under the Land Revenue Code is to be deemed (Section 196) a judicial proceeding, and the office of the authority holding such inquiry is to be deemed a Civil Court, but the order passed by a revenue officer under Section 87 of the Code is not in any way binding upon the parties like a decree and determines no question of right that may be at issue between them. To copies of such orders Article 9, and not Article 7 of the above schedule applies. (G. R. No. 5630, dated 31st July 1883.)

G. 17. **To Mahalkaris.**—G. R. No. 2598 of 31st March 1883, should be held applicable to Mahalkaris, who should continue to exercise the same powers under Sections 86 and 87 of the Code which they previously exercised under Regulation XVII. of 1827, (G. R. No. 6924, dated 15th August 1883.)

G. 18. **The Collector's power of refusing assistance.**—The power given to the Collector in the second paragraph of Section 87 of the Land Revenue Code of refusing assistance to a superior holder for the recovery of dues from his inferior holders when the question at issue between the parties ap-

pears to him to be of a complicated or difficult nature is a discretionary power; and the ordinary rule in appeals is not to interfere with the exercise by subordinate authorities of their lawful discretion. But this rule is subject to the qualification that it is a duty of the appelate authority to see that the subordinate exercises a sound discretion.

2. If a Collector declares a case under Section 87 of the Code to be of a complicated or difficult nature merely because the amount of rent which the superior holder has been in the habit of recciving, and which, therefore, he is *prima facie* still entitled to receive appears to him to be exorbitant, it is obvious that he uses his discretionary power simply in order to avoid giving effect to the law in what appears to him to be a hard case; or, in other words, he evades the law. (G. R., 168, dated 8th January 1884.)

G. 19. **Superior holders not registered in Collector's books.**—The provisions of Sections 86 and 87 of the Code contain the rent-law of this Presidency. Their object is to enable the persons entitled to receive rents to recover them summarily and inexpensively when their title is clear, but otherwise to require them to have recourse to the ordinary courts unless they can come to terms privately. Such persons may or may not be the persons whose names are registered in the Collector's books as the occupants or alienees of the land. It would have deprived our rent-law of its general applicability to all landlords and their tenants, if, in taking proceedings under it, revenue officers had to pay regard to the circumstance whether the applicant's name is recorded in the Collector's books or not, because that circumstance depends upon special considerations which do not necessarily enter into the questions regarding the relation of landlord and tenant. The question whether an applicant is the superior holder of the person from whom he seeks to recover rent is one which

should be determined in each case with reference to the statements of the parties and the evidence they produce.

The order given in para 8 of G. R. No. 7907, dated 13th November 1882, that "the only persons whom the Collectors can recognize as superior holders are those whose names are recorded in the Government accounts" should be withdrawn.

If when a tenant is asked for his reason for refusing to pay rent to a person who applies for assistance under Section 86 of the Revenue Code, he states that some other person and not the applicant, is his landlord, that is a very proper matter for enquiry; and when after enquiry it appears that there is a dispute between the two persons as to which of them is entitled to be the landlord of the tenant, the Collector is quite justified in declining to render assistance to either of them if the question raised by them appears to him to be "of a difficult or complicated nature." Nor is it absolutely necessary that the tenant should be made a party to any suit which the litigant landlords think fit to institute in order to get the dispute settled. (G. R. No. 3778, dated 10th May 1884.)

G. 20. **Collector not to withhold assistance.**—Paragraph 1 of Section 87 of the Code leaves the Collector no discretion as to withholding assistance for the recovery of rent or land-revenue which after a summary inquiry he finds to be lawfully due. The words are "He shall hold a summary inquiry and shall pass an order for rendering any assistance to the superior holder for the recovery of such amount, if any, as appears to him to be lawfully due." In these inquiries the Collector exercises in a summary way the jurisdiction of a Civil Court, and like those Courts he has no authority to go behind the liability and listen to appeals *ad misericordiam*. Even if he should do so, the last paragraph of Section 87 enables the landlord to go

to the Civil Court to recover from his tenant such amount as the Collector disallows, and the object of the Collector would be frustrated. (G. R. No. 8402, dated 25th October 1884.)

G. 21. Even where the question at issue is of a complicated or difficult nature, Section 87 clause 2, assumes that there can be no such question about the survey assessment. (G. R. No. 1339, dated 14th February 1885.)

G. 22. **Questions not governed by practice to be decided by Civil Courts.**—In cases, in which according to the existing practice the holders of sub-inams do not pay rent for the land constituting, their inams to the principal Inamdar, the question whether a change in the circumstances and extent of the principal inam holding warrants, its owner in demanding a payment of rent from the persons who hold the sub-inams is one which it is for the Civil Court, and not for the Collector, to decide. (G. R. No. 3727, dated 8th May 1885.)

G 23. **Opinions of law officers on the subject.**—The following opinion of the Honourable the Advocate-General, and the reports from the Remembrancer of Legal Affairs clearly solve the question as to whether the Collector is bound to grant assistance to a superior holder whose name is not recorded in the Collector's books :—

(*a*) Opinion of the Honourable the Advocate-General.

"1. I think that a question whether an applicant for assistance in the recovery of rent or land-revenue is the superior holder of the land in respect of which the rent or land-revenue is claimed may be a question at issue between the parties within the meaning of Section 87 of the Bombay Land revenue Code, 1879. 'The parties' referred to in that section are the person claiming assistance as superior holder on the one side, and the person against whom the assistance is asked on the other ;

and it is open to the latter, unless estopped from so doing, to set up as a defence that the former is not the superior holder. If the question raised by this defence be, as it well may be, of a complicated or difficult nature, the Collector may, at his discretion, refuse the assistance asked for.

"2. I think the Collector is bound under Section 86 of the Land Revenue Code to grant assistance to an applicant whose name is not recorded in the revenue records, but who appears from the evidence produced to be the superior holder, unless (*a*) such applicant is denied by the person against whom the assistance is asked to be the superior holder, and the question whether he is so or not or any other relevant question appears to the Collector to be of a complicated or difficult nature; or (*b*) the case falls within the latter portion of Section 79. No condition of registration in the revenue records is attached to the definition of superior holder in the 13th clause of the 3rd section of the Code, and I think it impossible to imply such a condition in the other passages in the Act in which the term 'superior holder' is used. But at the same time I think that the Collector may in cases brought before him under Section 86 exercise the discretion given to him by Section 79 of refusing to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records, as Section 79 seems to me to be of general application and not limited by the particular chapter of the Act in which it occurs. But there may be many cases in which the name of a superior holder is not recorded in the revenue records which do not fall within the words of Section 79. If it be thought desirable to give the Collector power in all cases to refuse to recognize a person as superior holder unless his name is recorded in the revenue records, I think that further legislation is necessary."

(*b*) Memorandum from the Remembrancer of Legal Affairs, No. 452, dated 11th April 1885:—

"1. The Remembrancer of Legal Affairs has the honour to report that he concurs in the opinion of the Honourable the Advocate General as to the provisions and scope of Section 79 of the Land Revenue Code.

"2. The undersigned's memorandum No. 446, dated 6th April 1883, quoted in the preamble of Government Resolution No. 3102 of 20th idem, indicated his opinion as to the general applicability of the section in question and further urged the desirability of its provisions being, as a rule, strictly enforced.

"3. The operation of Section 79 in the case of an application under Section 86 of the Code would be that if the person who makes the application bases his right to make it upon a transfer which ought, under any of the provisions of the Code, to have been recorded in the revenue records, but has not been so recorded, the Collector may decline to recognize the applicant, *i.e.*, may refuse to take any action upon his application."

(*c*) Memorandum from the Remembrancer of Legal Affairs, No. 535 dated 28th April 1885:—

"1. The word 'assigned' may be taken to be equivalent to the word 'transferred.' When one person conveys or makes over property to another he transfers or assigns it to that other person.

"2. Section 79 of the Code says that 'the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.

"3. The scope of this clause is limited by its last words; it can only be applicable in the class of cases in which the foregoing provisions of the

Code provide for transfers being recorded in the revenue records.

"4. Thus Section 70 of the Code provides how effect is to be given to decrees of courts which declare an occupancy right to be vested in some person other than the person whose name has been hitherto entered in the Collector's records. So long as the person who is entitled to have his name entered in the revenue records under that section abstains from taking the necessary action to get his name entered, the Collector is not bound to recognize him as the occupant.

"5. So also with regard to private conveyances, whether of occupancies or of alienated holdings, in favour of another person, Sections 74, 75 and 76 provide a means whereby the name of the transferee may in certain cases be substituted in the revenue records for that of the transferer. If in any such case the transferee should apply to the Collector for assistance to recover rent from the inferior holders without having first of all got his name entered, the Collector would not be bound to recognize him.

"6. In the case of a partition amongst owners who have hitherto held jointly the entire estate standing in the revenue records in the name of one of them only, the Collector is also, I think, not bound to recognize a separated sharer who applies for assistance to recover rent from the inferior holders of his allotted share without having first of all got the lands in that share entered in the revenue records in his name. A definite portion of the estate has been assigned or transferred to such sharer and unless, through the operation of some provision of the Code or of some rule made under it, he is unable to get the share transferred to his own name, the Collector would be justified in refusing to recognize him until his name is duly entered in the revenue records as the registered oc-

cupant or the holder, as the case may be, of his share."

(*d*) Memorandum from the Remembrancer of Legal Affairs, No. 668, dated 29th May 1885 :—

"1. I do not think that Section 79 of the Revenue Code was applicable to the case reported on in my No. 537 of 15th April 1884 at all.

"2. Certain inam lands had stood in the Collector's books in the name of Pachhabibi. At her request they were transferred to the name of her only surviving male relative Sadat Saheb, and on the death of the latter his daughter Chhotibibi's name was substituted for his.

"3. The lands belonged to Pachhabibi and to Chhotibibi and Chhotibibi's sister. Each of these was entitled to a share; but whether each managed her own share or Pachhabibi managed the whole had not been ascertained. Pachhabibi, however, applied for assistance for the recovery of rent from her tenants, after the lands had been entered in the Collector's records in Chhotibibi's name. Here there was no question of any interest in the alienated holding having been assigned to Pachhabibi; her interest had, apparently, remained the same, notwithstanding the mutations of names which had taken place. Pachhabibi was not therefore, a 'person to whom any interest in any portion of an alienated holding had been asigned,' and it was not open to the Collector under Section 79 of the Revenue Code to decline to recognize her. (G. R. No. 5243, dated 26th June 1885.)

G. 24. **Local Fund Cess.**—All that the Inamdars are entitled to is the assistance in collecting the cess to which they are entitled. If they wish to employ the Village Officers as agents to collect the cess, the latter will be quite justified in refusing to act unless they are paid reasonable remuneration. (G. R. No. 10501, dated 31st December 1885.)

G. 25. **Procedure in cases of death of tenant.**—In cases of applications for assistance under Section 86, if the tenant against whom the assistance is applied for, die after the application is made, the procedure to be followed should be that prescribed in Section 368† of the Civil Procedure Code, *viz.*, the Mamlatdar should postpone the case and call upon the applicant to specify the name of the legal representative of the deceased tenant whom he wishes to be entered in the record in lieu of the deceased and to have a fresh notice issued to such representative. (G. R. No. 632, dated 26th January 1887, and G. R. No. 4672, dated 21st July 1887.)

† Now Rule 4 of Order XXII of Act V of 1908.

G. 26. **Applications by Jahagirdars need not be stamped** :—Letters or *yadees* addressed to the Collector or other Political officers, by Jahagirdars holding their estate under treaty agreement (for assistance in the collection of rent) cannot be considered as applications or petitions requiring to be stamped. (G. R. R. D. No. 3584, dated 21st October 1887.)

G. 27. The present practice of allowing the superior holder to make a single application for assistance under Section 86 against several inferior holders is correct; and no new rule seems to be called for. (G. R. No. 8721, dated 23rd December 1887.)

G. 28. **Expenses of a sale in assistance cases.**—The recommendation of the Commissioners that the Bhatta payable to a karkun deputed to conduct a sale following as consequence of an application for revenue assistance should not be separately charged, is approved, except in cases in which the services of the karkun have been entirely placed at the disposal of the holder of a khotee or Inam village for any considerable time to execute assistance decrees. In such cases the pay and allowances of the karkun must be recovered from the khot or Inamdar. (G. R. No. 1880, dated 20th March, 1888).

The general practice, with regard to levying expenses in assistance cases which is at present followed and which has been approved by Government Resolution No. 1880, dated 20th March 1888, may be summed up as follows :—

In the enquiry stage,—proceedings originate with a plaint or petition which requires a Court fee stamp of 1 anna when the amount of the claim is less than Rs. 50, and 8 annas when it is Rs. 50 or more. A process fee of 3 annas for every notice or summons issued to the defendant or a witness is also charged, and the expenses of witnesses have also to be paid at the rate of 4 annas or 6 annas per witness, according to the class to which he belongs. All these expenses generally follow the decree, an exception being made only in those cases where the Court considers that the plaintiff was over-hasty in seeking its assistance, or for such similar reason.

The execution stage.—In most cases expenses end after the decree, and there is no formal execution stage. The Mamlatdar sends an order to the village officers giving particulars of the decree passed and directing them to enforce it. As a rule the defendant pays the money due on verbal orders from these officers, and there is no further trouble. But where this is not the case and an attachment and sale of the defendant's property is rendered necessary, ex-expenses of sale are recovered at the following rates :—

2 annas in the case of moveable property ;

4 annas in the case of immoveable property ; or

$\frac{1}{64}$th of the amount realized by the sale ;

whichever is the greater. (G. R. No. 2459, dated 26th March 1883.) Where a formal notice is issued prior to the attachment and sale of the defendant's property, a notice fee is also charged at the rate of 4 annas if the amount of the decree does not exceed Rs. 5, and 8 annas in other cases. These expenses also fall on the defendant, *i. e.*, they follow the decree.

When a karkun has to be sent for conducting a sale in the rare cases in which a sale becomes necessary, it is the practice in some districts to levy the karkun's bhatta, or travelling allowance for the day along with the expenses of sale, and this charge also falls on the defendant.

G. 29. If the question whether the applicant for assistance is the superior holder or not, is at issue in the Courts and the Collector has been made judicially cognizant of this proceeding upon the application for assistance, he must refuse assistance. (G. R. No. 6476, dated 26th September 1888.)

G. 30. **Of arrears.**—The law (proviso to Section 86) does not contemplate the grant of assistance to superior holders for the recovery of land-revenue due to them from their tenants for past years. Accordingly in a case in which an application was made by an Inamdar for assistance to recover from his tenants, the revenue due to him for the past years, he was referred to a Civil Court. (*Vide* G.R. R. D. No. 3035, dated 13th April 1885.) The Inamdar filed a suit against one of his tenants, and eventually got a decree in his favour, and then on the strength of this decree, made an application for assistance to recover his dues from other tenants. On this, the point, whether the assistance applied for by the Inamdar should be granted or not, was referred to Government. On this reference the following orders were passed :—

"His Excellency the Governor in Council is of opinion that the Collector may now give to the Inamdar the assistance he asks. A test case was taken into Court by the Inamdar and won by him on original hearing and on appeal. It is better for him and for his tenants who will eventually, if sued, have to pay the demand and will further be mulcted in costs that the arrears should be paid without further delay, and this can be effected through the intervention under the law of the local revenue-

officer whenever a *prima facie* case for interference appears. (G. R. No. 64, dated 5th January 1889.)

G. 31. **Of sums not sanctioned by law.**—A Jahagirdar obtained agreements from his tenants binding them to pay, as local-fund Cess, sums in excess of the local fund actually payable by them in respect of their holdings. He filed suits on these agreements and obtained decrees in his favour. He then applied for assistance under Section 87 to recover the sums decreed upon from his tenants. In this case it was decided that, although there was nothing to prevent the Jahagirdar from enforcing the agreements in a Civil Court, they would by no means entitle him to recover from his tenants as local-fund cess, with the assistance of revenue officers, more than he could recover under the Bombay Local Fund Act (III. of 1869), without such contract, that such agreements would not extend the powers of revenue officers, which were strictly limited to the recovery of sums *leviable by law*, and that it would be illegal, therefore, to assist the Jahagirdar in recovering more than what the law authorized by the special procedure of the Land Revenue Code, Sections 86 and 87. (G. R. No. 4013, dated 3rd June 1889.)

G. 32. **Persons representing superior holders need not necessarily be pleaders.**—The question whether superior holders applying under Section 86 of the Code for assistance in recovery, of dues from inferior holders can be represented by any person who is not a pleader, has been disposed of by the following orders :—

"The difficulty arises from Section 196, Bombay Land Revenue Code, which declares that all formal and summary enquiries under that Act shall be deemed judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, and that the office of any authority holding any such enquiry shall be deemed a Civil Court for the purposes of such enquiry.

"It would seem that such enquiries are judicial proceedings for the purposes only of Sections 193, 219 and 228, Indian Penal Code, and under the maxim *expressio unius est exclusio alterius* are not judicial proceedings for the purposes of any other enactment.

"The office of the authority making such an enquiry is a Civil Court for the purposes of the enquiry, but the proceedings are judicial only in the above limited sense, and the appearances, applications and acts authorized by law to be made or done, are not made or done by parties to suits or appeal within the meaning of Section 36,* Civil Procedure Code, and, Section 39† of the Civil Procedure Code would not appear therefore to apply.

"That such officers are not Civil Courts for all purposes is clear from Section 87 of the Bombay Land Revenue Code, which provides for recourse to the Civil Courts as distinguished from such officers.

"Regulation II, of 1827, Section 1, which is still in force, requires that no person shall be allowed to act in any judicial proceeding in any Court except the pleaders, the parties, or their recognized agents.

"But Section 47 refers to Courts, appointed under that Act, which have jurisdiction over all suits of a civil nature of which their recognizance was not barred. It did not refer to what were then called Revenue Courts.

"The recourse to the Civil Courts now reserved by Section 87, Bombay Land Revenue Code, was under clause (5) of Section 26 of Regulation XVII of 1827 to the Collector and when this jurisdiction was taken from him by Bombay Act XI. of 1866 special provision was made by Section 8 of the last

*Now rule 1 of order III of First Schedule to Act V of 1908.
†Now rule 4 of order III of First Schedule to Act V of 1908.

mentioned Act for pleaders engaged in such suits there pending to appear in the Civil Courts. This seems to indicate that Section 47 of Regulation II of 1827 was not deemed applicable to Revenue Courts, and therefore any person (not a pleader) holding a general power of attorney can represent the parties.

"As moreover inquiries under Section 87, Bombay Land Revenue Code, are by Section 196, judicial proceedings only within the meaning of the specified sections of the Indian Penal Code, Section 47 of Regulation II of 1827 would not apply to them." (G. R. No. 840, dated 1st February 1890)

G. 33. **Applications need not be made in person; may be sent by post.**—An application by a superior holder for assistance for the recovery of rent (under Section 86 of the Code) is not liable to rejection if sent by post.

The Code itself merely requires from a superior holder an application that is written; neither presentation in person, verification, nor examination of the applicant can be required as a condition precedent to the issue of a notice by the Collector as directed in Section 87. The words of that section are imperative.—"On application being made under Section 86 to the Collector, he shall cause a written notice thereof to be served."

As there is nothing to require or justify verification by, or an examination of, an applicant under Section 86, there seems to be no necessity for his personal attendance. The Legislature in dispensing with the verification required for a civil plaint (Civil Procedure Code, Section 51*), and with the examination required on a criminal complaint (Criminal Procedure Code, Section 200), seems to have regarded an application in writing as a sufficient guarantee of good faith to justify action in the first instance. Against persons who, knowing

* Now rule 15 of order VI of First Schedule of Act V of 1908.

they had no title, caused the Collector to harass cultivators unnecessarily, Section 182 of the Indian Penal Code would afford adequate protection.

No advantage could be gained by pseudonymous application as the assistance given would be only to a *bona fide* superior holder. *Bona fide* disputes as to titles are appropriate matters for summary enquiry under Section 87. But the applicant is not required to support his title by his own or other evidence before, as well as after, notice.

The object of Sections 86 and 87 is as stated in G. R. No. 3778, dated 18th May 1884 (see *supra* order No. 21), to avoid delay by providing a summary and inexpensive procedure for recovery, and it is probably for this reason that verification and personal appearance required in Civil Courts are dispensed with.

Under Section 196 enquiries under Sections 86 and 87 are judicial proceedings only for the purposes of Sections 193, 219 and 228 of the Indian Pennal Code, and on the maxim—*expressio unius est exclusio alterius*—none of the formalities required by other enactments for the initiation of judicial proceedings are necessary to such enquiries unless expressly required by the Code.

There is nothing in the Code to indicate that the making of an application involves the formal attendance of the applicant, and Section 65 seems to contemplate that in the instance there considered at least, an application may be made by a person not present to receive the answer.

Both departmental and public inconvience might arise from the detention of applicants till their identity and status could be ascertained, and questions of titles are clearly to be postponed till they can be enquired into in the presence of the opponent.

There can, of course, be no objection to an applicant's employing the post instead of a private

messenger for the bare delivery of his application. (G. R. No. 8027, dated 12th November 1890.)

G. 34. The Collectors may delegate their powers under Sections 86 and 87 to Mahalkaris under Section 13 of the Land Revenue Code, taking care to make the Assistant Collector in charge of the Taluka the immediate superior of the Mahalkari for the purposes of Section 203 of the Land Revenue Code, *i. e.*, the purpose of appeals. (G. R. No. 8616, dated 12th December 1891.)

G. 35. **When once struck off the file can be re-entertained.**—When applications for assistance under Sections 86 and 87 of the Land Revenue Code are received, the Mamlatdars fix a certain day for the enquiry, but it sometimes happens that the applicant does not appear on the day fixed, and the result is that the application is filed. After some time, however, the applicant puts in his appearance, adduces sufficient excuse for his non-appearance on the appointed day, and urges the proceeding may be resumed. In civil cases this is permissible under the provisions of Section 99* of the Civil Procedure Code, but as applications for assistance do not appear to be of nature of civil plaints,—and the fact that they are allowed by Government to be received by post without verification seems to support this view,—the question is whether when such applications are once struck off the file they can be re-entertained or not.

This question has been decided by the following orders :—

"For the reasons stated in G. R. No. 840, of 1st February 1890 (see *infra* order No. 32) proceedings before revenue officers under Sections 86 and 87 of the Land Revenue Code are not subject to the provisions of the Civil Procedure Code.

"It is presumed that the Legislature purposely trammelled revenue officers as little as possible with binding rules of procedure in such cases,

* Now Rule 4 of Order IX of Act V of 1908.

intending that they should act on equitable principles without being bound by precise provisions.

"Applying this view of the law to the question referred to, it would appear in the circumstances above described that the application should be re-entertained, provided that petition for re-entertaining it be made within the year prescribed in the proviso to Section 86 of the Land Revenue Code. Indeed, there is nothing to prevent a landlord from making a second entirely fresh application for assistance if his first has been 'filed,' owing to his failure to appear on the date fixed for the hearing, provided the second application be made within the above year; and a petition to re-entertain a first application is tantamount to a second application. But landlords ought not to be allowed to evade the proviso to Section 86 by means of any such petition or second application." (G. R. No. 8720, dated 17th December 1891.)

G. 36. Certain Naikwadis in the Karhad Taluka hold lands belonging to the Pant Pratinidhi free of assessment, in lieu of service as shet sanadis. As the naikwadis rendered no service or only partiat service Government directed that the Pant Pratinidhi was within his rights in demanding either the whole or part of the assessment and is entitled to assistance in enforcing his demand. (G. R. No. 1229 dated 13th February 1895.)

G. 37. **Any superior holder may apply for assistance.**—The High Court's Judgement in Appeal No. 26 of 1897, Sambu bin Bapu *vs.* Kamalrao Vithalrao has the following remarks:—

Section 71 was inapplicable as regards any private or Deshmukhi alienated land. There is nothing in Section 86 requiring an applicant to be a "registered superior holder." The term is unknown in the Land Revenue Code.

Possibly it might conduce to better Revenue administration if the Collector were empowered to

hold an inquiry and determine who should be "recognized" holder of alienated lands to whom tenants should attorn until the decree or order of a competent Court is produced. But such at present is not the law.

The facts of the case are as given below:—

V died leaving a will dividing his estate among his sons K and four others by one wife and B by another. K managed the estate during the life-time of V. The will not being operated upon, the Collector entered the name of K. Some tenants paid revenue to B and against them K got assistance from revenue Courts. The Sub-Judge granted an injunction against K. and this was upheld by the High Court. (G. R. No. 6899, dated 17th September 1897.)

G. 38. **In appeals* pleaders cannot claim a right to represent their parties.**—For the reasons stated in G. R. No. 840, dated 1st February 1890, a Collector is not legally bound to admit pleaders in proceedings under Section 86. Enquires under Sections 86 and 87 are judicial proceedings for the purpose of Sections 193, 219, 228, Indian Penal Code (*vide* Section 196). They are not judicial proceedings in the sense that they require the various formalities laid down by the Civil Procedure Code for such proceedings. Section 47 of the Regulation II of 1827 and Section 36† of the Civil Procedure Code do not apply, and therefore a pleader cannot claim any right to appear in such enquiries. (G. R. No. 8915, dated 8th December 1897.)

G. 39. **No assistance for recovery of interest should be given.**—Government officers should not permit a misapplication of the powers given to them by the law, *i. e.*, in giving assistance for rent in the the guise of interest. (G. R. No. 1279, dated 21st February 1898.)

* Each appellant must make a separate appeal unless two or more persons jointly hold land on account of the rent for which assistance has been granted.

† Now rule 1 of order III of First Schedule to Act V of 1908.

G. 40. **In cases of land held on Kauls or perpetual leases.**—There are villages in which the tenants are in the habit of paying to the Inamdars a rental determined by Kauls or perpetual leases and a local fund cess calculated on the amount they actually pay. If a survey settlement is introduced in such a village, the Inamdar becomes liable for the cess calculated on the survey assessment under Section 6 of Bombay Act III of 1869, and if this amount happens to be greater than the amount previously paid, he is entitled to recover the amount of the enhanced cess after introduction of the survey settlement. But as the Kauls are perpetual leases, he cannot increase that rental so as to make it equal to the survey assessment. (G. R. No. 3865, dated 10th June 1898.)

G. 41. **Year to mean the longest period.**—The ordinary and natural sense of the second clause is that the applicant is plainly to be allowed the benefit of whichever of the two periods mentioned (*viz.*, the revenue year or the year of tenancy) may give him the longest period of limitation within which to make his application. Thus where a year of tenancy ran from 29th April 1896 to 28th April 1897, the period of limitation would differ according as the rent became payable in 1896-97 or 1897-98. In the first case the longest period is the expiry of the tenancy, in the second, 31st July 1897. If the year of tenancy expires on 28th February 1897, the rent not being payable within the year, if the same tenancy continued another year, the longest period will be on or before 28th February 1898. In such a case the applicant is not bound to make his application before 31st July 1897. (G. R. No. 3617, dated 23rd May 1899.)

G. 42. **Appointment of village Officers in an Inam village.**—Whenever an appointment of a village officer is made in an Inam Village the Inamdar or his agent should be given notice and his objections, if any, to any person whom it is proposed to

appoint should be fully considered before the appointment is made. The person to be appointed should be required to sign an undertaking to use all diligence to collect the dues of the Inamdar. (G.R. No. 5733, dated 17th August 1899.)

G. 43. **Territorial limits of the Mamlatdar and the Special Head Karkun need not be defined.**—Assistance cases under Land Revenue Code stand on a different footing to possessory suits under the Mamlatdar's Court Act and the remarks on procedure in regard to the latter in G. R. J. D. No. 7843, dated 26th November 1898, do not apply to the former. There is therefore no object to be gained in defining the territorial jurisdiction of the Mamlatdar and the Special Head Karkun for the latter. (G. R. R. D. No. 7780, dated 1st November 1899.)

G. 44. **Execution of assistance decrees.**—Arrangements should be made to provide sufficient establishment to secure the prompt and vigorous execution of process in all villages in which Assistance has been granted under the orders of the revenue authorities. (G. R. No. 705, dated 30th January 1900.)

G. 45. A village officer of an alienated village who fails to satisfy the Collector that he will exercise the necessary diligence and show reasonable efficiency in the collection of the revenue due to the Inamdar is certainly unfit to undertake the duties of his office and may be rejected under Sections 42 and 43 (Vatan Act). It is desirable that quarterly statements of collections and arrears of revenue in alienated villages should be submitted. (G. R. No. 809, dated 3rd February 1900.)

G. 46. The Commissioners should instruct all Mamlatdars in their Divisions and in Sind that by declining to recognize transferers whose names are not entered in the records, or by any other legal means, they should discourage the employment by money-lenders of the provisions of the Land Revenue Code as a means of recovering extortionate in-

terest and evading the Deccan Agriculture Relief Act.

The impression, that a Mamlatdar cannot refuse to recognize a mortgagee (with possession), if he had omitted to have his name entered in the Revenue records, is erroneous. (G. R. No. 1078, dated 16th February 1900.)

G. 47. Head Karkuns in certain talukas of the Satara District were authorised to dispose of such rent suits as may be transferred to them by Mamlatdars. The Commissioner should fix a pecuniary limit to the cases which an Awalkarkun is permitted to try. (G. R. No. 1133, dated 19th February 1900.)

G. 48. The instructions contained in G. R. No. 809, dated 3rd February 1900 (see above) need not be carried out in the Northern Division. (G. R. R. D. No. 2388, dated 11th April 1900.)

G. 49. **Free Notice of hearing to the superior holder.**—A notice of the date of hearing should continue to be furnished to applicants without charge. A copy of the notice served on an inferior holder or co-sharer should be sent by endorsement to the applicant for information and guidance. (G. R. No. 4932, dated 8th August 1900.)

G. 50. **Prompt assistance to be given :**—Local officers should clearly understand that their duty in giving aid in the recovery of revenue of alienated villages is not less binding than the duty of collecting the Government revenue. (G. R. No. 4931, dated 16th July 1901.)

G. 51. The order to be passed under Section 87 is one for rendering assistance for the recovery of such amounts as appear to be lawfully due, and when such order is passed any or all of the measures prescribed in Chapter XI. may be taken until the amount held to be lawfully due is collected. When a superior holder has not paid revenue on the date on which it is due, there is failure to pay

and it is then open to the Collector to recover from co-sharers or persons in actual occupation. This course should he adopted when the exact amount due from any individual is known but not otherwise. (G. R. No. 5084, dated 20th July 1901.)

G. 52. Assistance must be refused to mortgagees who have omitted to have their names entered in the Revenue Records. This modifies G. R. No. 1078, dated 16th February 1900. (F. 3813, dated 5th October 1901.)

G. 53. In pursuance of G. R. No. 5084, dated 20th July 1901 the Commissioner, C. D., issued the following Circular $\frac{R}{3573}$, dated 16th August 1901:—

1. Every Mamlatdar should see that the village officers furnish the Inamdars with the *vasulbaki* or statements of outstanding balances due from each tenant immediately after the lapse of the date of each instalment to enable them to file assistance suits earlier than at the end of the revenue year as is now the case in most cases.

2. In alienated villages where the demand against each tenant is settled by the Survey Department, there will be no dispute about the demand and therefore the assistance suits in such cases ought to be disposed of within fifteen days at least, from the date of their presentation. Any case undisposed of for one month from the date of presentation should be reported to the Collector.

3. In cases where the demand is settled by long usage no delay should be necessary, but where the demand is not fixed as aforesaid but fluctuates from time to time according to the agreements between the parties or where the payment is in kind, there will be some delay in arriving at the correct dues claimed. Assistance suits of this nature should be disposed of at least within one month from the date of their presentation. In complicated cases the parties will of course be referred to the Civil Courts. Cases in unsettled villages not disposed of within

two months from the date of presentation should be referred to the Collector.

4. Execution of decrees passed in assistance cases should not be deferred for years as is at present the case. As desired in the G. R. all the measures prescribed in Chapter XI. may be taken, if necessary, promptly until the amount held to be lawfully due is collected.

5. As a general rule no decrees should remain unexecuted beyond six months from the dates thereof.

6, The Collector and Assistant and Deputy Collectors when examining a Mamlatdar's office or when visiting an alienated village should pay special attention to this part of the administration. (*vide* G. R. No. 7092, dated 8th October 1901.)

G. 54. **Serving of processes.**—Government Resolutions, No. 881, dated 14th February 1873, and No. 4702, dated 18th August 1873, authorise the Collectors of Districts to engage temporary peons for the service of revenue processes and to pay them at daily rates for the number of days they may have been employed, the amounts so paid being drawn on contingent* bills supported by a certificate that the fees realised in stamps were sufficient to cover the expenditure charged in the bill. The entertainment of a temporary clerk throughout the year without the sanction of Government is irregular. Paragraph 9 of the Committee's report in the preamble to G. R. No. 1880, dated 20th March 1888 (see footnote to G. 28), states that the work of the karkun who issues summonses and notices and keeps register is represented by the Court Fee on the petition which covers also the cost of stationery and that of the peon, whom Government has to send out, process serving is fairly met by the process fee

* The remuneration of process servers is paid from Government Treasury and debited to "land revenue." (G. R. No. 7350 dated 21st October 1882.)

annas 3 for such summonses or notices served. (G. R. No. 2827, dated 28th April 1902.)

G. 55. **Inamdars to furnish rent rolls.**—Inamdars should at the beginning of each revenue year furnish the rent-roll (Village Form No. 11) to the village officers—hereditary, if there be any. (G.R. No. 3782, dated 4th June 1902.)

G. 56. **Judi and other haks in Inam villages.**—The J. of I. complains that the moveable property of the Inamdar is liable to be attached and sold, in case of default in payment of the judi, cash allowances of Kadim Hakdars and remuneration of village officers. He says that these items can at the most be treated as shares of the revenue of the inam village and the loss, if any, should be borne proportionately by all. Government do not agree in this view, and they consider that the liability in question should be maintained.

2. As regards judi, Government have ordered in their Resolution No. 5652, dated 8th June 1908, that Inamdars should receive a proportionate deduction when they bind themselves to give suspensions and remissions to their tenants on the same scale as in Government villages. No further relaxation can be allowed in this respect.

3. With regard to Kadim Hakdars generally, excluding the village officers, the existing orders must be maintained. In Government villages they receive their allowances without deduction in bad and good times alike, and there appears to be no valid reason for giving inferior treatment to those of them who belong to alienated villages.

4. As regards the village officers, patil and kulkarni, Government observe that there is a decided tendency on the part of these officers to show slackness in the collection of the Inamdar's dues, and Government consider that the only remedy is to give the Inamdar greater authority over them by making their remuneration dependent on the effi-

ciency of their work. Government therefore propose to issue the following orders :—

The full scale allowances should be collected and paid into the Taluka treasury, and the village officers should receive their pay there at the prescribed dates. But each such village officer should be required to present a certificate from the Inamdar to the effect that the collections up to date had been satisfactory. If the Inamdar considers that they are deficient, he should be required to endorse on the certificate particulars showing totals due on account of current demand and arrears and totals actually collected. The Mamlatdar should apply roughly to the village the scale of suspension and remission introduced in adjoining Government villages, and should deduct from the dues of the Inamdar as stated by him the amount found by application of the said scale, and take the remainder as the net amount due to the Inamdar. If the collections fell materially short of this net amount, the Mamlatdar should pay only half of the remuneration to the village officers and postpone payment of the remainder. He should call on the village officers to submit an explanation of the deficient collections and should submit it to the Prant Officer, who would decide what proportion of their remuneration should be finally paid to the village officers. (G. R. No. 10112, dated 6th October 1902.)

G. 57. It should be made the rule for Mamlatdars to enquire into and decide applications from holders of alienated villages as far as possible, in the villages concerned, the summary inquiry being in ordinary cases completed on the day fixed. G. R. No. 5084, dated 20th July 1901, was not intended to authorise repeated or frequent distinct processes of execution. It was merely intended to direct that for the purpose of executing an order for recovery all legal process might be applied continuously until exhausted. Once this has been done, a fresh application for execution in the case of the same

arrears should not be entertained except for very special reasons, such as evidence that the defaulter had previously concealed available property. (G. R. No. 7537, dated 29th October 1903.)

G. 58. **An Inamdar's dues cannot be recovered for him by the Collector.**—The Collector cannot under the present law use any of the powers under Chapter XI of the Land Revenue Code in realizing for Inamdars dues from their inferior holders, except upon an application under Section 86 or upon reference under Section 90, in the case of an Inamdar who is the holder of a commission under Section 88. (G.R. No. 1493, dated 24th February 1904).

G. 59. The orders in G. R. No. 5084, dated 20th July 1901 (see above) should be applied not to Inam villages alone, but they apply equally to alienated holdings in Government villages.

2. The Satara system of keeping the Government and Inamdar's accounts separate should be extended to all districts of Central and Southern Divisions except Ratnagiri. This applies to Inam villages only and not to alienated holdings in Government villages. (G. R. No. 5120, dated 5th July 1904).

G. 60. **Recovery of Judi.**—When an Inamdar omits to pay his Judi, the Collector acquires the right to go past him (without exhausting all the processes against him first) and recover from those below him.

2. When the exact amount of Judi due from coshares is not ascertainable, the Collector may recover the rents up to the point required to pay the whole Judi. He should not attempt any calculation of what the proportion of Judi due from the land of each ryot is. He is to recover the *rents* the rayats owe to Inamdars. Who the ryots are to be from whom the rents are to be recovered, it is for the Collector and other local authorities to determine.

3. When the exact amount of each co-sharer is ascertainable and if certain ryots or lands have been assigned to each of them, the Collector may recover from the ryots or lands the rents due to the co-sharer up to the point required to satisfy the Judi due from the co-sharer. (G. R. No. 9920, dated 21st December 1904.)

G. 61. **Recovery in a Sharakati Dumala.**—Collections in Sharakati Dumala village should be divided among the sharers in proportion to their shares. (G. R. No. 1468, dated 21st February 1905).

G. 62. **Year, in case of suspended revenue :—** The condition (in the proviso) prescribed in Section 86 should be considered to be complied with if the application for assistance is received within the year to which the payment has been postponed by order under the suspension and remission Rules. (G. R. No. 4849, dated 17th May 1906.)

G. 63. **Special Head Karkuns :—**They should be appointed under Section 13 to be Mahalkaris for talukas excluding the head quarter stations and the Collectors should then assign to them within their local limits the power to hear and to dispose of applications under Sections 86 and 87 and the duties and powers contemplated in Sections 71 and 154 of the Code.

2. The Commissioner should fix a pecuniary limit to the cases which these Head Karkuns should be permitted to try.

3. The effect of the devolution of work should be carefully watched. (G. R. R. D. No. 8269, dated 11th October 1906.)

G. 64. Government are not in favour of allowing officials of the status of Awalkarkuns to try rent suits without pecuniary limit and think that the limit of Rs. 50 which has been generally adopted is better to be adhered to. (G. R. No. 8507, dated 27th August 1907.)

G. 65. **Mukhtyarkars in Sind:**—The Collectors and Deputy Commissioners may delegate their powers under Sections 86 and 87 to Mukhtyarkars. (Serial No. 1 of the statement accompanying G. R. R. D. No. 8046, dated 7th August 1908.)

G. 66. Rent of lands as an agricultural holding should be awarded to a Sawakar. (G. R. No. 12771, dated 15th December 1908.)

G. 67. Treasury Head Karkuns should not be authorised to dispose of assistance cases. (G. R. No. 4143, dated 18th November 1909.)

G, 68. The original documents filed in assistance cases should be destroyed after two years. If the parties really require the documents they should apply for them within two years. (G. R. No. 1018, dated 1st February 1911.)

J. 1. **Not to bar Civil Suit.**—The concluding part of Section 87 shows clearly that the Mamlatdar's order does not preclude the parties from having recourse to the Civil Court if dissatisfied with it. (Ganesh Hathi *vs.* Metha Vyankatram Harijivan,—I. L. R., 1884 VIII., Bombay, page 188.)

J. 2. Where G was convicted under Section 183, Indian Penal Code, for having resisted by force the Taluka General Duty Karkun when the latter came to distrain some goods, grain, &c., at his house for making recovery of dues on behalf of the Khot who had applied for assistance to the Mamlatdar under Section 86, *Held*, that as it did not appear on the face of the conviction that the Mamlatdar was an officer to whom, under the provisions of Section 12, the powers of the Collector constituted by Section 87 had been delegated under any general or special order of the Government, nor that the Karkun employed to distrain was an officer directed to perform that duty by the Commissioner under the orders of the Government, the conviction must be reversed. (Cr. R. 13—24th February 1887—Imperial *vs.* Yeshwant Hari).

J. 3. **Of enhanced rents.**—Sections 86 and 87 of the Land Revenue Code do not make it compulsory on the Inamdar or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the Inamdar or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel or village accountant, as required by Section 85 of the Code, and they had refused, he would have become at once entitled to his ordinary civil remedy, objection as to the absence of legal demand for enhanced rent not being taken.

Held, that the suit was properly tried by the Court of first instance on the merits. The lower Appellate Court having dismissed the suit on the ground that the Inamdar was not a party to the suit, a point on which no issue was raised, although it had been taken in the written statement, and which was not made a ground of appeal.

Held, that the point must be considered to have been abandoned at the trial; it was, therefore, not open to the lower Appellate Court to dismiss the suit on that ground. (GOVINDRAO KRISHNA RAIBAGKAR *vs.* BALABIN MANAPA, 1892, I. L. R., Bombay, Volume XVI., page 586.)

J. 4. Powers exercised by Government under the Code do not extend to Inamdars. (P. J. 198, Sarwotamrao *vs*, Sakharam, 1893.)

J. 5. Swamitwa agreed upon between a Representative Watandar and his Deputy is not recognised by the civil courts. *A fortiori* assistance to recover this swamitwa cannot be given by Revenue Courts. (Appa V. Sadhu, I. L. R., 18 Bom. 752.)

J. 6. The defendants were liable to pay the assessment and local fund to the plaintiff who held a sanad under the Summary Settlement Act, 1863, *held* the plaintiff was a superior holder under Section 3 and that the defendants were in law the tenants of the plaintiff, whatever the nature of

their holding might have been. (Sursanggi *vs.* Naran, Bombay, Law Reporter, Vol. II, 1900, page 855.)

J. 7. The plaintiff, an Inamdar, sued to recover assessment due for the years 1895–96 and 1896–97 from Defendant 2, who came in as a purchaser from the original occupancy tenant on the 5th April 1899. The lower Court passed a personal decree against Defendant 2 for the arrears of assessment.

Held—That Defendant 2 was not liable, since an Inamdar suing for assessment was not entitled to a charge on the lands, but only to a money decree against the occupants. Ratanji *vs.* Sakharam (1884) P. J. p. 69 followed. [Vinayak *vs.* Laxman (1904). I. L. R. XXVIII., Bombay, 92.]

[a] **88.** It shall be lawful for the [b] Commissioner at any time to issue a commission to any holder of alienated lands, conferring upon him all or any of the following powers in respect of the lands specified in such commission (namely):

Commissioner may, by commissions, confer certain powers on holders of alienated lands.

(*a*) to demand security for the payment of the land revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorized to take under sections 141 to 143;

(*b*) to attach the property of persons making default in the payment of such land revenue or rent, as aforesaid;

(*c*) to fix from time to time the times at which, and the instalments in which, the land revenue or rent due to him shall be payable;

(*d*) to exercise the powers of a Collector under sections 65 and 66;

(*e*) to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided;

(*f*) to take measures for the maintenance and repair of boundary-marks in the manner provided for survey officers in section 122:

Provided that the powers contemplated in clauses (*e*) to (*f*) shall be conferred only on holders of lands to which a survey settlement has been extended under the provisions of section 216.

[a] As to the local modification of section 88, see para. 5 of foot-note [a] on p. 1, *supra*.

[b] This word was substituted for the original words, 'Governor in Council" by Bom. IV of 1913, s. 40 (*1*).

SUMMARY (S. 88.)

1 Section.—

To be read with another Section ... N 1

2 Collector as official guardian does not require a Commission ... G 2

3 Commission.

(1) Generally given in surveyed villages ... ... G 3

(2) Held by a sharer in a Jaghir village... ... ... J 1

(3) Not applicable to property outside the limits set forth in it... N 2

(4) Points to be considered before granting ... ... N 3

4 Precautionary measures—

Power of—does not include power to inflict punishment ... ... G 1

5 Vital and agricultural statistics—

Condition for furnishing—when to be imposed ... ... G 4

N. 1. *Vide* G. R. No. 2901, dated 15th April 1886, under Section 141.

N. 2. The commission under this section does not apply to property outside the limits set forth in the commission.

N. 3. The following points are to be borne in mind when granting a commission under this Section :—

A—General in respect of unsurveyed and surveyed villages. (Vide schedule F. to L. R. C.)

1. Is the person recommended
   (*a*) a holder or alienated lands (sec. 88 L. R. C.) or
   (*b*) his agent (sec. 89 L. R. C.) including one on behalf of minor's guardian or on behalf a Native State holding Inam villages in British territory ?
2. Is the village *other* than a sharakati Inam village (item 14 under village acts in the accompaniment to G.R.R.D. No. 9032 of 26-9-1911).
3. Is there a part of a village separately assigned to and held by a sub-sharer as in the case of Mugaon taluka Wai (vide G. R. R. D. No. 3232 of 10-5-1902).

B—In respect of unsurveyed villages only :—

1. Whether powers under (*a*) and (*b*) only are recommended (proviso to sec. 88 L. R. C.)
2. Whether the Collector considers holder fit to be entrusted with the powers and can be trusted not to rack-rent the tenants. (G. R. No. 7537 dated 29th October 1903.)
3. Whether the holder has given an undertaking on an eight anna stamped paper to levy rents according to the *Dhara* or other ascertained custom of the village when such customary rental is certified to be just by the Collector. (Ibid and Article 5.
   (*c*) to schedule I to Act II of 1899.)
4. (An agreement on plain paper untaking to suspend or remit rent as in Government villages is not now necessary in view of the new section 84-A in the L. R. C.)

C—In respect of Surveyed Villages.

1. Are there any sub-sharers and if so whether their consent which is necessary has been obtained? (G. R. R. D. No. 6984 dated 16th July 1907.)
2. (An agreement on plain paper is not necessary as stated in B (4) above.)
3. Whether the agreement is consistent with the Collector's report *i.e.*, about co-sharers, and about chapters 8 and 9 extended to the village.
4. Whether powers other than those under clauses (*a*) and (*b*) are recommended.

5. Powers under clause (*c*) are not to be recommended because the dates of Instalments should be the same as in the neighbouring villages.
6. Powers under clause (*d*) should not be recommended because powers of a Collector should not be generally given. (G.R. R.D. No. 6984 dated 16th July 1907.)
7. Powers under clause (*e*) (Second part) are generally unnecessary.
8. Powers under clause (*e*) (first part) should only be recommended when the Inamdar resides in the village.
9. Powers under clause (*f*) should not be recommended (as the work is done by the taluka staff.) (G.R. No. 7169 of 24-7-09.)

G. I. **Inamdars may be invested with powers to take precautionary measures but cannot inflict punishment.**—Section 88, clause (*a*) of the Code and the Commissions issued under it empower the holders of such Commissions to take such precautions as the Collector is authorized to take under Sections 141 to 143. Sections 141 and the first and second paragraphs of Section 142 provide precautionary measures for the security of land-revenue, and there is no objection to the holder of the Commission acting under them. The third paragraph of Section 142, however, relates to the infliction of a penalty for disobedience of an order made by such holder, and enacts that such penalty may be inflicted on conviction after a summary inquiry. This involves a *quasi*-judicial proceeding (*vide* Section 195), and is obviously something quite distinct from the precautionary measures provided for securing the payment of land-revenue. The holder of a Commission cannot, therefore, exercise this power, but if he wishes to have a penalty

inflicted under Section 142 on any of his inferior holders, his proper course is to move the Collector to enquire into the matter, and not to inflict the the penalty himself.

Section 143 enables the Collector, if the revenue is not discharged within two months after the crop has been deposited under Section 141, clause (*b*), to take such portion thereof as he may deem fit for sale under the provisions of Chapter XI. applicable to sales of moveable property in realization of the revenue due and of all legal costs. This power also vests in the holder of a Commission, but the taking of a portion of the defaulter's crop is an attachment of his property, and when it is done the holder of the Commission is bound to make an immediate report thereof, under Section 90, to the Collector. At this point "precautions" cease and the Collector has to step in under Section 90 to determine whether the attached crop may be sold or not. (G.R. No. 106, dated 6th January 1883.)

G. 2. **Procedure to be adopted in recovering rent and revenue due to estates of which the Collector is the official guardian.**—It is not necessary to issue a commission to the Collector in his capacity of guardian. In his capacity of Collector he can exercise all the powers specified in Section 88. He is not required to apply to the Mamlatdar for assistance, on the contrary any assistance which the Mamlatdar, can give is given by him as a deputy of the Collector, and the Collector can direct assistance to be given in any case whatever in his district in which it is legal to grant it. (G. R. No. 5424, dated 5th August 1902, and No. 4450, dated 11th June 1904.)

G. 3. The rule should be that in the absence of special reason to the contrary every Inamdar, who introduces or has introduced a surevy settlement into his village should be granted a commission,

provided that he agrees to give suspensions and remissions according to the rules applicable to Government villages. It is most important to induce Inamdars to introduce Survey Settlements into their villages and the fact that they will thereby acquire a claim to commission should be impressed upon them. * * *. Where there are sub-sharers they should be called on to state any objections they may have to the issue of the commission in the name of the registered Inamdar. * * * Endeavour should be made, in the Collector's discretion to overcome objections.

The commissions eventually granted will confer powers under all clauses of Section 88 except clause (*d*), under which commissions will be granted* only in cases which may be specially recommended and on the condition that the Inamdar levies special assessment at rates not exceeding those of, and generally in accordance with, the rules applicable to Government villages. (G. R. No. 6984, dated 16th July 1907.)

* It is not necessary to insert in the commission this condition but an agreement on stamped paper should be taken from the Inamdar embodying the condition. (Government Memorandum No. 7177, dated 15th July 1908, quoted in the pre-amble to G. R. No. 511, dated 18th January 1909.)

G. 4. The condition requiring an Inàmdàr to furnish the vital and Agricultural statistics should be imposed only when the village officers are paid by the Inamdar. (G. R. No, 7229, dated 23rd July 1907.)

J. 1. A sharer in a Jahagir holding a commission under Section 88 has no right to sue alone to recover the highest rate of assessment, unless he is acting by the consent of all the co-sharers as the Manager of the Jahagir. (Balkrishna *vs.* Moro—I. L. R., III. Bombay 23—and P. J. 263 of 7th August 1895—Appeal No. 40 of 1894.)

Form of such commission.

[a]**89.** Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of [b] the Commissioner [b]; and a commission may, if the [c] Commissioner see fit, be issued to one or more agents of a holder of alienated lands as well as to the holder in person.

[a] As to the local modification of section 89, see para. 5 of foot-note [a] on p. 1, *supra*.

[b—b] These words were substituted for the original word "Government" by Bom. IV of 1913, s. 40 (*2*).

[c] This word was substituted for the original words "Governor in Council" by Bom. IV of 1913, s. 40 (*2*).

Reference must be made by holder of commission to the Collector in certain cases.

90. If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been made, appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of sections 165 to 186.

But if the holder of the commission is invested, under Regulation XIII of 1830, with civil jurisdiction and with power to execute his own or his agent's decrees, the sale shall be conducted by him and not by the Collector and his subordinates.

G. I. **Inamdar's report exempt from Court fee stamp.**—The report required to be made by an Inamdar under this section is not an application or petition within the meaning of article 1, clause (*b*) of Section 2 of the Court Fees Act, and therefore

does not requires a stamp. (G. R. No. 987, dated 11th February 1882.)

G. 2. Mamlatdars and Mahalkaries can order sale under this Section (G.R. No. 5295 dated 1st June 1911 item 47.)

91. All compulsory process shall cease : When compulsory process shall cease.

on the defaulter's paying or tendering the amount demanded of him under protest, or

on his furnishing either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

And any holder of any such commission as aforesaid, by himself or his agents, proceeding with any compulsory process after payment made, or tendered as aforesaid, or after the furnishing of such security as aforesaid or after tender thereof, shall be liable on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process. Penalty for continuing compulsory process.

92. The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or rent of the current year and of the year next immediately preceding, but not to that of former years. Power under commission to extend to current rent and previous year's arrears.

93. The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid, previously to the date of such demand, or of what he may have contracted in writing to pay. In the event of a dispute the Collector shall Holder of commission not to enforce any unusual or excessive demand.

hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decidad to be just.

Penalty for so doing.

The person against whom any demand shall have been enforced in excess of the amount of which payment is lawfully enforceable shall be entitled to recover, on conviction of the holder of the commission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land revenue.

But holder of commission may establish his right to enhanced rent in Civil Court.

[a]**94.** Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or resettle the revenue of any inferior holder paying less than the full snm to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

[a] As to the local modification of section 94, see para, 5 of foot-note [a] on p. 1, *supra*.

Recovery as revenue demand of dues of certain superior holders for specified period.

[a]**94A.** (*1*) The superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, and to which a survey settlement has been extended under section 216, may by application in writing to the Assistant or Deputy Collector in charge of the

taluka request that the rent or land revenue due to such superior holder may during a period named in the application be recoverod as a revenue demand.

(2) The Collector may in his discretion sanction the application for a period not exceeding that named by the applicant, and in such case the following provisions shall apply :—

(a) Any rent or land revenue that accrues or has accrued due to the superior holder during the sanctioned period or a period of six years previous thereto shall, to an extent not exceeding the assessment fixed on the land, be recoverable under the orders of the revenue authorities as a revenue demand during the sanctioned period.

(b) Where any proportion of the land revenue that accrues or has accrued due to Government in respect of unalienated land in the same neighbourhood during the said sanctioned or previous period has been suspended or remitted by proper authority, the Collector may suspend or remit an equal or lesser proportion of the rent or land revenue that accrues or has accrued due to the superior holder during the corresponding period. Any such suspension or remission shall, notwithstanding anything in the Bombay Revenue Jurisdiction Act, 1876, be binding upon the

X of 1876.

superior holder in any subsequent proceedings in any Civil Court between the superior and inferior holders or their legal representatives, and any proceedings pending at the date of such suspension or remission shall abate to the exsent of any claim that may be inconsistent therewith ; and no Civil Court shall entertain any suit against the Secretary of State or Government in respect of any such suspension or remission.

(*c*) Where any such suspension or remission has been granted to an inferior holder, the land revenue (if any) payable by the superior holder shall be suspended or remitted, as the case may be, to a proportionate extent.

(*d*) The balance of any sum recovered under clause (*a*) shall be paid to the superior holder after deduction of the costs, if any, of recovery and of any sum lawfully chargeable upon the sum recovered.

[a] This section was inserted by Bom. IV of 1913, s. 41.

G. 1. This section is inserted to save Inamdars the trouble and expense of filing assistance suits. If applications by Inamdars are made in numbers, the cost of special establishment required should be borne by Inamdars in proportion to the revenue collected—no cost should be levied at present. (G. R. No. 3334, dated 19th March 1915.)

G. 2. Government are not disposed to extend Section 94 A of the Land Revenue Code to all surveyed inam villages which have no hereditary vil-

lage officers and the question of modifying it so as to make it applicable to villages in which the kulkarni watan has been commuted will be considered along with the other legislation which may be necessary in connection with the commutation of kulkarni watans. (G. R. R. D. No. 8783, dated 12th September 1916.)

CHAPTER VIII.

OF SURVEYS, ASSESSMENTS AND SETTLEMENTS OF LAND REVENUE [a]

Revenue survey may be introduced by Governor in Council into any part of Presidency

95. It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose and such survey shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Governor in Council may direct; and subject to the orders of the Governor in Council it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

Control of revenue survey.

The control of every such revenue survey shall vest in and be exercised by the Governor in Council.

[a] This title was substituted for the original title by Bom. IV of 1913, s. 42.

SUMMARY (S. 95.)

Survey.

(1) general principles in Survey and Settlement Manual ... ... N 1